

## § 2.196

## 37 CFR Ch. I (7–1–13 Edition)

the interruption or emergency may petition the Director to consider such correspondence as filed on a particular date in the Office.

(2) The petition must:

(i) Be filed promptly after the ending of the designated interruption or emergency;

(ii) Include the original correspondence or a copy of the original correspondence; and

(iii) Include a statement that the correspondence would have been deposited with the United States Postal Service on the requested filing date but for the designated interruption or emergency in "Express Mail" service; and that the correspondence attached to the petition is the original correspondence or a true copy of the correspondence originally attempted to be deposited as Express Mail on the requested filing date.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply to correspondence that is excluded from the Express Mail procedure pursuant to § 2.198(a)(1).

[68 FR 48289, Aug. 13, 2003, as amended at 69 FR 57185, Sept. 24, 2004; 73 FR 67775, Nov. 17, 2008]

### **§ 2.196 Times for taking action: Expiration on Saturday, Sunday or Federal holiday.**

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by regulation under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday.

### **§ 2.197 Certificate of mailing or transmission.**

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 2.190 and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Office in accordance with § 2.195(c); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to:

(i) Applications for the registration of marks under 15 U.S.C. 1051 or 1126; and

(ii) Madrid-related correspondence filed under § 7.11, § 7.21, § 7.14, § 7.23, § 7.24 or § 7.31 of this title.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Office, and an application is abandoned, a registration is cancelled or expired, or a proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence within two months after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.